

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**RE: PETITION OF BAY STATE GAS COMPANY
FOR APPROVAL OF REVISED TARIFFS**

DTE 05-27

LOCAL 273 OPPOSITION TO BAY STATE MOTION FOR RECONSIDERATION

On December 13, 2005, Bay State Gas Company (“Bay State”) filed a Motion for Reconsideration (“Motion”) asking the Department to reconsider approximately a dozen issues decided in the Decision and Order (“Order”) released November 30, 2005. By e-mail notice dated December 16, the Hearing Officer allowed parties ten days to file any responses to any post-Order motions to reconsider or clarify.

Local 273 of the Utility Workers Union of America (“Local 273”) hereby opposes that portion of the Bay State Motion which seeks reconsideration of the Department’s adjustments to “Westborough Office Lease Expense,” Motion, pp. 11 - 15.¹

Bay State argues that the Order “does not comply with Department precedent” regarding recovery of office expenses. A review of the facts presented in this case and the precedents cited by Bay State establish that the present facts are unprecedented and that the cases Bay State relies on bear little relevance to the present facts.

The Department’s adjustments to office expense are premised in part on conscious decisions of Bay State’s Merrville, Indiana parent company to depopulate Bay State’s Westborough, Massachusetts headquarters, following NiSource’s acquisition of Bay State. As

¹ Local 273’s silence as to other issues for which Bay State seeks reconsideration should not be interpreted as support for any of Bay State’s arguments or positions. Rather, Local 273’s opposition focuses exclusively on the issue of office expense because Local 273 presented much of the evidence and arguments upon which the Department relied in making its adjustments to office expense.

noted in the Order (at 222), Local 273 argued that NiSource's decisions to reduce staff at the Westborough headquarters were in violation of representations made to the Department by NiSource (then NIPSCO) and Bay State in DTE 98-31. Elsewhere in the Order, the Department itself noted:

At the time of the Company's acquisition in 1998, representations were made that Bay State would continue to **have strong local management, local operations would not be affected**, and significantly increased sales would result from the merger. [Record and case citations omitted.] **Despite these representations, there is evidence that NiSource has engaged in significant staff reductions**

Id. at 303 (emphasis added). The Department emphasized that "the motivation of this displacement may stem as much, if not more, from Bay State's parent as from the Company itself." *Id.* at 417. Moreover, the staff reductions at Westborough and within Bay State's three operating divisions (Lawrence, Springfield and Brockton) caused the Department sufficient concern to announce its intent to open a separate investigation into Bay State's staffing levels. *Id.* at 417 - 419. Such a fact pattern, where an out-of-state parent company consciously chooses to reduce staff and leave an in-state headquarters building largely vacant, is completely unprecedented in the Department's jurisprudence. The present facts are even more unique in that the Department has raised questions about the parent company's motives and announced plans to further investigate those staffing reductions. None of the alleged precedents cited by Bay State bears any analogy to this case, and the Department is therefore not required to reconsider its Order on lease expense.

The precedents cited by Bay State have their own unique facts, for the most part involving the addition of major generating facilities to rate base, only reinforcing Local 273's position that there is no controlling precedent for the Department's decision and no reason to

reconsider. For example, in *Western Massachusetts Electric Co.*, DPU 85-270 (1986), the Department reviewed the prudence of WMECo's investment in the Millstone 3 generating station at the time the plant was going into service and providing electricity for customers. There is little analogy between a decision to include in rate base a generating plant that is providing electricity to consumers and a decision to exclude a portion of lease expense due to conscious and challenged decisions of an out-of-state parent company to reduce staffing at an in-state headquarters. Similarly, the decision in *Boston Edison Company*, DPU 906 (1982) regarding the appropriate cost treatment of BECo's investment in the canceled Pilgrim II plant is a reflection of the Department's specialized rules regarding recovery of investments in canceled or retired generating plants. It has limited, if any, relevance when deciding how to treat office expenses.²

Bay State's citation (Motion, p. 12) to *Massachusetts-American Water Co.*, DPU 95-118 is a particularly weak basis for seeking reconsideration. The Department's Order acknowledges DTE 95-118 and other cases as precedent for the general rule that companies may usually recover the costs of leases they have entered to obtain office space. Order, at 224. The Department found "that the lease is eligible for inclusion in the Company's overall cost of service," but immediately added:

However, contrary to the Company's arguments on brief, **the Department's inquiry can not end there. The fact that a lease agreement may have been appropriate in the past does not necessarily justify continuation of the arrangement into the indefinite future.**

Id. (Emphasis added). This quotation makes it abundantly clear that Bay State is merely

² As the decision in the *WMECo* case itself noted, the Department has developed specialized exceptions to the "used and useful" concept in determining the appropriate rate treatment of abandoned plants. DPU 85-270 at 23. *See also Fitchburg Gas & Electric Light Co.*, DTE 02-24/25 (2002) (rate treatment of transformer installed to meet large customer's needs).

rearguing arguments already made and that there is no basis for reconsideration.

In conclusion, Local 273 opposes Bay State's Motion for Reconsideration regarding Westborough office lease expense and asks that the Department deny the company's request.

Respectfully Submitted,

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